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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Corbin A McNeill, Jr.,

No. CV-23-02481-PHX-SMM

10 Plaintiff,

ORDER

11 v.

12 CP Boulders LLC,

13 Defendant.

14
15 Before the Court is Plaintiff's First Motion for Partial Summary Judgement. (Doc.
16 36). The Motion is fully briefed. (Docs. 52; 59). For the following reasons, the Court denies
17 the Motion.

18 **I. BACKGROUND**

19 Since 2011, Plaintiff Corbin McNeill ("Plaintiff") has been a member of The
20 Boulders Club, a private golf and social club located in Scottsdale, Arizona. (Doc. 1-1 at
21 5). Upon joining The Boulders Club, members receive a Membership Plan, The Boulders
22 Club Membership Agreement and Bylaws ("Membership Agreement" and "Original
23 Bylaws"), and the Rules and Regulations of the Club. (*Id.* at 4). The documents are
24 collectively referred to as the "Club Documents". (*Id.* at 5). The Club Documents constitute
25 a binding, enforceable contract between the members and the ownership.

26 Defendant CP Boulders LLC ("Defendant") purchased The Boulders in 2015. (*Id.*
27 at 7-8). The Membership Agreement was amended at that time to reflect Defendant's
28 ownership of The Boulders, but no substantive changes were made to the Membership

1 Agreement. (Id. at 8). When Defendant became owner of The Boulders, Defendant became
 2 bound by the obligations of the Membership Agreement. (Id.) On March 10, 2023,
 3 Defendant amended the Bylaws (“Amended Bylaws”). (Doc. 54 at ¶ 10). Notice of the
 4 Amended Bylaws was not given in the formal manner provided by the Original Bylaws.
 5 (Id. at ¶ 11).

6 Plaintiff filed suit against Defendant in the Maricopa County Superior Court on
 7 October 31, 2023, bringing claims for breach of contract. (Doc. 1-1 at 2). Plaintiff alleges
 8 that the Amended Bylaws imposed by Defendant violate the Membership Agreement by
 9 creating new membership categories and creating materially different rights and privileges
 10 of members. (Id. at 14). As well, the Amended Bylaws are alleged to offer new categories
 11 of membership with the privileges and benefits previously revoked by Defendant while
 12 diminishing Plaintiff’s material rights and charging higher fees. (Id. at 15).

13 Plaintiff has filed six discrete Motions for Partial Summary Judgment. (See Docs.
 14 36; 37; 45; 46; 60; 61). Plaintiff has since withdrawn one of his motions. (Doc. 80). In the
 15 First Motion for Partial Summary Judgment, Plaintiff moves the Court to find that the
 16 Amended Bylaws are void and ineffective, due to the failure of Defendant to provide
 17 formal notice to the members. The Court reviews.

18 **II. LEGAL STANDARD**

19 A party seeking summary judgment “bears the initial responsibility of informing the
 20 district court of the basis for its motion[] and identifying those portions of [the record]
 21 which it believes demonstrate the absence of a genuine issue of material fact.” Celotex
 22 Corp. v. Catrett, 477 U.S. 317, 322 (1986). Summary judgment is appropriate if the
 23 evidence, viewed in the light most favorable to the nonmoving party, shows “that there is
 24 no genuine issue as to any material fact and that the movant is entitled to judgment as a
 25 matter of law.” Fed. R. Civ. P. 56(c). Only disputes over facts that might affect the outcome
 26 of the suit will preclude the entry of summary judgment, and the disputed evidence must
 27 be “such that a reasonable jury could return a verdict for the nonmoving party.” Anderson
 28 v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

1 **III. ANALYSIS**

2 Plaintiff asks this Court to declare that the Amended Bylaws are void and
 3 ineffective, due to the failure of Defendant to follow the mandatory notice procedures
 4 applicable to any attempt to amend the Original Bylaws. (Doc. 36 at 1). In response,
 5 Defendant asserts that the Original Bylaws only required notice for amendments that
 6 materially and adversely affected members' rights under certain sections, while any other
 7 amendment may be made by Defendant "in its sole discretion," and "unilaterally." (Doc.
 8 52 at 1-2). Defendant states that the notice clause is at best ambiguous, and in any event,
 9 members did receive actual notice of the amendment and the lack of formal notice as
 10 required by the Original Bylaws did not prejudice them, amounting to a trivial breach.
 11 Therefore, Defendant asserts, it would be improper to grant Plaintiff's Motion. (See Doc.
 12 52).

13 Section 7.3(G) of the Original Bylaws provides:

14 Amendment to the Membership Agreement. Provided that any
 15 modification of this Agreement does not materially and adversely affect the
 16 then-current Members' rights under Sections 1.8, 2.1, 2.2. 2.3, 2.4, 4.3, 5.2
 17 B, 5.2 C, 5.3, 6.1, 6.3, 6.4, 6.5, 6.7, 7.2 B, 7.2 C, 7.3 A, 7.3 C, and 9.5 ... The
 18 Boulders, in its sole discretion, shall be entitled to unilaterally modify and
 19 amend this Agreement (including establishing, changing and terminating
 20 various Membership classifications and the terms of admission, privileges
 21 and facilities available to the Members within each Membership
 22 classification). The Boulders may modify and amend this Agreement in a
 23 manner which materially and adversely affects the then-current Members'
 24 rights under Sections 1.8, 2.1, 2.2. 2.3, 2.4, 4.3, 5.2 B, 5.2 C, 5.3, 6.1, 6.3,
 25 6.4, 6.5, 6.7, 7.2 B, 7.2 C, 7.3 A, 7.3 C, and 9.5, and the right of refundable
 26 Members (upon conversion to a higher membership category) to 100% credit
 27 of the initiation fee they previously paid toward the initiation fee of the new
 28 membership category pursuant to Section 6.8 of this Agreement if such
 modification or amendment is approved by more than 50% of the total of the
 then current Members (if the modification or amendment affects all of the
 Membership classifications) or by more than 50% of the then-current
 Members of the applicable Membership classifications (if the modification
 or amendment affects less than all of the Membership classifications). All
 such modifications shall be in writing and shall be sent to all members ...

(Doc. 38-1 at 27).

1 The question before the court is to determine whether amending the Bylaws required
 2 the Board to provide formal notice to the members. It is undisputed that the Board did not
 3 provide the formal notice, as defined in the Original Bylaws, when implementing the
 4 Amended Bylaws. (Doc. 54 at ¶11).

5 The phrase used in Section 7.3 is “[a]ll such modification shall be in writing and
 6 shall be sent to all members.” Therefore, the Court must determine which modifications
 7 the word “such” describes. The theory advanced by Plaintiff is that “such” refers to all
 8 modifications of the Original Bylaws, while the theory advanced by Defendant is that “such”
 9 refers to modifications that “materially and adversely affects the then-current [m]embers’
 10 rights” under the enumerated sections in the clause.

11 Defendant points to the canon of construction “the Rule of Last Antecedent,” which
 12 is applicable to contracts in Arizona. See, e.g., Phoenix Control Systems, Inc. v. Insurance
13 Co. of North America, 796 P.2d 463, 466 (Ariz. 1990) (“The last antecedent rule is
 14 recognized in Arizona and requires that a qualifying phrase be applied to the word or phrase
 15 immediately preceding as long as there is no contrary intent indicated”). Under this
 16 interpretation of the Original Bylaws, “such modification” means such modification that
 17 affect members rights under specific sections of the bylaws, as Section 7.3 had just finished
 18 defining the process by which such provisions could be modified.

19 The Court agrees with Defendant’s interpretation of the Original Bylaws. To find
 20 otherwise, would be to find that the word “such” is superfluous in the contract, as Plaintiff’s
 21 interpretation would be true if the term was removed.¹ See, e.g., Pauma Band of Luiseno
22 Mission Indians of Pauma & Yuima Rsrv. v. California, 813 F.3d 1155, 1171 (9th Cir.
 23 2015), (citing 11 Williston on Contracts § 32:5 (4th ed. 2015)) (“An interpretation which
 24 gives effect to all provisions of the contract is preferred to one which renders part of the
 25 writing superfluous, useless or inexplicable.”). The Original Bylaws states that the Board
 26 can “unilaterally modify and amend [the] Agreement” so long as it does not “materially
 27 and adversely affects the then-current [m]embers’ rights” under the enumerated sections in

28 ¹ Removing the word “such” would have the statement read “all modifications shall be in
 writing and shall be sent to all members.”

1 the clause. Then, the section describes how the Board could modify the Original Bylaws
 2 in a manner that affects the previously enumerated members rights, so long as the
 3 modification received a majority vote of the then-members. Common sense dictates that
 4 the next sentence, requiring formal notice for “[a]ll such modifications,” relates solely to
 5 the immediately preceding statement concerning amendments that materially impact the
 6 members’ enumerated rights. Such a reading aligns with the “the Rule of Last Antecedent”
 7 cited by Defendant.

8 Although the canon of construction, along with a common sense reading of the
 9 provision, is sufficient to find for the Defendant, the Court is also persuaded by the
 10 unrebutted evidence provided by the Affidavit of Board member Mr. John Maskovich. (See
 11 Doc. 45 at Exhibit 1). Mr. Maskovich, the General Manager of the Boulders Resort and
 12 Spa, and a member of the Board, stated that the Board’s understanding of the language
 13 requiring formal notice was that it only applies to amendments that materially and
 14 adversely impact members rights. (Id. at ¶ 7). This is persuasive in light of Section 7.3 of
 15 the Original Bylaws, which states: “Interpretation. All decisions of the Board of Directors
 16 shall be final on all questions involving the interpretation or construction of this
 17 Agreement, the rights and privileges of the members under this Agreement, the
 18 Membership Plan and the Rules and Regulations. In resolving such questions, the Board
 19 of Directors shall act reasonably and in good faith.” (Doc. 54 at ¶ 8).

20 The Court does not find it necessary to address Defendant’s other arguments, as the
 21 Court’s reading of the Original Bylaws purports with Defendant’s theory.

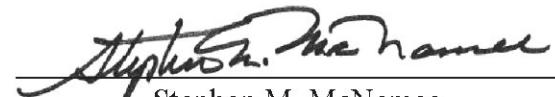
22 Alternatively, Plaintiff argues that the Amended Bylaws did in fact materially and
 23 adversely affect Plaintiff’s rights, and therefore must be considered void. The Court notes
 24 that this argument was raised for the first time in Plaintiff’s Reply Brief. (Doc. 59).
 25 Therefore, the Argument is not properly before the Court. See Surowiec v. Cap. Title
26 Agency, Inc., 790 F. Supp. 2d 997, 1002 (D. Ariz. 2011) (“It is well established in this
 27 circuit that courts will not consider new arguments raised for the first time in a reply
 28 brief.”). However, even if the Court were to consider the argument and take the assertion

1 to be true, given that Plaintiff's requested relief is to declare the entirety of the Amended
2 Bylaws as void and ineffective, the Court does not find such claim relevant to the Motion
3 before it. The Court will address arguments that specific amendments to the Original
4 Bylaws are void under this theory when and if they come before the Court.

5 Accordingly,

6 **IT IS ORDERED** denying Plaintiff's First Motion for Partial Summary Judgment.

7 Dated this 6th day of June, 2025.

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11 Stephen M. McNamee
12 Senior United States District Judge
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